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Attorneys for Plaintiffs and the Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(OAKLAND DIVISION)

KIRK KEILHOLTZ and KOLLEEN
KEILHOLTZ for themselves and on
behalf of those similarly situated,

Plaintiffs,

vs.

SUPERIOR FIREPLACE COMPANY;
LENNOX HEARTH PRODUCTS, INC.;
LENNOX INTERNATIONAL, INC. and
DOES 1 through 25, Inclusive;

Defendants.

Case No.: 4:08-CV-00836-CW (JCS)

~~PROPOSED~~ ORDER GRANTING
FINAL APPROVAL OF CLASS
SETTLEMENT; FINAL JUDGMENT AND
ORDER OF DISMISSAL

1 This matter came before the Court for hearing pursuant to the Order of this
2 Court, dated January 11, 2011 ("Preliminary Approval Order"), and on the application of
3 the Plaintiffs for a judgment finally approving the Settlement that is set forth in the
4 Stipulation and Agreement of Settlement dated as of November 12, 2010 (collectively,
5 including the Exhibits, the "Settlement Agreement"). Due and adequate notice having
6 been given to the Settlement Class as required in said Preliminary Approval Order, and
7 the Court having considered all papers filed and proceedings had for this matter and
8 otherwise being fully informed in the premises and good cause appearing therefor, IT
9 IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

10 1. This Judgment and Order of Dismissal incorporates by reference the
11 Preliminary Approval Order. This Judgment and Order of Dismissal further incorporates
12 by reference the definitions in the Settlement Agreement, and all capitalized terms
13 contained in this Judgment and Order of Dismissal shall have the same meanings as set
14 forth in the Settlement Agreement (in addition to those capitalized terms defined in this
15 judgment).

16 2. The Court has subject matter jurisdiction over the Federal Action,
17 including all matters necessary to effectuate the Settlement pursuant to 28 U.S.C.
18 §1332(d).

19 3. For purposes of effectuating this Settlement only, the Court hereby orders
20 final certification of the proposed Settlement Class, having found that the requirements
21 of Rule 23 of the Federal Rules of Civil Procedure are met. The Settlement Class is
22 defined as follows:

23 a) All consumers who are residents of the United States and who own
24 homes or other residential dwellings in which one or more Superior or Lennox brand
25 single-pane sealed glass front gas fireplaces have been installed since February 6, 2004
26 through January 11, 2011, the date the Court preliminarily approved the Settlement;
27 and
28

1 b) All consumers who are residents of California and own homes or
2 other residential dwellings in which one or more Superior brand single-pane glass
3 sealed front gas fireplaces have been installed between March 1, 2003 and February 5,
4 2004.

5 c) The Settlement Class closed as of January 11, 2011, the date the
6 Court in the Federal Action entered the Preliminary Approval Order.

7 d) For purposes of the Settlement Class definition, "consumer" means
8 an individual who bought his or her home or fireplace for personal, family or household
9 purposes.

10 e) Excluded from this class are: (1) the judge to whom this case is
11 assigned and any member of the judge's immediate family; (2) the lawyers in this case
12 and any member of their immediate families; (3) the Mediator (the Honorable Edward
13 Infante) and any member of his immediate family; and (4) anyone who suffered
14 personal injury related to the Defendants' fireplaces.

15 4. A list of those Persons who timely and validly filed requests for exclusion
16 from the Settlement Class is attached as Exhibit "1" to this Judgment and Order of
17 Dismissal and incorporated by reference as though fully set forth in this Judgment and
18 Order of Dismissal. The Persons appearing on Exhibit "1" shall not be members of the
19 Settlement Class and shall have no right to receive any Class Settlement Consideration.
20 All members of the Settlement Class (whether or not he/she or it submits a valid Claim
21 Form) who have not validly excluded themselves from the Settlement Class shall be
22 bound by all determinations and judgments concerning the Settlement Agreement and
23 the Settlement contemplated thereby.

24 5. The Court appoints the following Plaintiffs to serve as representative of
25 the Settlement Class ("Class Representative"): Kirk Keilholtz; Kolleen Keilholtz; Anissa
26 Nelson-Fields; Jerry Fields; Rich Perry; and, Donna Perry. The Court appoints the
27 following lawyers to serve as counsel for the Settlement Class ("Class Counsel"): Kirk
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1 Wolden; Michael Ram; and, Jerome Tapley.

2 6. Solely for the purposes of effectuating the Settlement, with respect to the
3 Settlement Class and pursuant to Rule 23 of the Federal Rules of Civil Procedure, this
4 Court further finds and concludes that:

5 a) joinder of all members of the Settlement Class in a single
6 proceeding would be impracticable, if not impossible, because of their number and
7 dispersion;

8 b) no conflict exists between the Class Representative or Class
9 Counsel and the Settlement Class;

10 c) the Class Representative and Class Counsel are adequate
11 representatives for the Settlement Class;

12 d) the Class Representative's claims are typical of the Settlement
13 Class;

14 e) the Class Representative is a member of the Settlement Class and
15 has claims representative of the claims and defenses presented in this case;

16 f) commonality is satisfied in this case for settlement purposes as a
17 number of common issues exist among members of the Settlement Class;

18 g) common issues predominate over individual issues in the context of
19 settlement; and

20 h) certification of an agreed-upon settlement class is a superior
21 mechanism for resolving these claims.

22 7. Notice has been provided to the Settlement Class of the pendency of the
23 Actions, the conditional certification of the Settlement Class for purposes of this
24 Settlement, and the preliminary approval of the Settlement Agreement and the
25 Settlement contemplated thereby. The Court finds that said notice and the related
26 Notice Plan provided for the best notice practicable under the circumstances to all
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1 Persons entitled to such notice and fully satisfied the requirements of Rule 23(c)(2)(B)
2 of the Federal Rules of Civil Procedure and the requirements of due process.

3 8. Defendants have complied with the applicable requirements of CAFA,
4 including timely notice of the Settlement Agreement to the appropriate state and federal
5 officials and the provision of other required information under 28 U.S.C. section 1715.
6 The Court did not receive any expression of concern or objection to the Settlement or
7 its terms from any state or federal official having received such notice.

8 9. The Court finds that the proposed Claims Administration Plan fairly and
9 adequately addresses the matters of settlement administration, claims submission and
10 distribution of the Class Settlement Consideration to Authorized Claimants. To become
11 an Authorized Claimant to the Class Settlement Consideration, a member of the
12 Settlement Class must submit a claim in the manner set forth in the instructions
13 accompanying the Claim Form. Defendants will make distributions of the Class
14 Settlement Consideration to Authorized Claimants in accordance with the Claims
15 Administration Plan and the Settlement Agreement.

16 10. All members of the Settlement Class whose claims are not approved
17 (including, without limitation, anyone who does not submit a Claim Form by the end of
18 the Claims Period) will be barred from participating in the distribution of Class
19 Settlement Consideration, but in all other respects will be bound by all of the terms of
20 the Settlement Agreement and the terms of this Judgment and Order of Dismissal,
21 including without limitation, the releases provided for in the Settlement Agreement and
22 in this order, and will be barred from bringing or prosecuting any action against the
23 Released Parties concerning the Released Claims.

24 11. The Court has considered and hereby overrules any and all objections by
25 members of the Settlement Class, and finds they are no impediment to approval of the
26 Settlement. The Court notes that, despite having received a Notice of Intention to
27 Appear from Objector Narkin on his own behalf and those of purported Objectors
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1 Martinettis and Brumitts, Objector Narkin did not appear at the final Settlement
2 Approval Hearing on June 2, 2011 at 2 p.m.

3 12. The Court finds that the Settlement Agreement was arrived at in good
4 faith following extensive arms-length negotiations between experienced counsel, and
5 the Settlement is fair, reasonable and adequate as to all members of the Settlement
6 Class within the meaning of Rule 23(e)(2) of the Federal Rules of Civil Procedure. In
7 reaching this conclusion, the Court has considered all factors set forth in *Rodriguez v.*
8 *West Publ'g Corp.*, 563 F.3d 948, 963 (9th Cir. 2009), *Staton v. Boeing Co.*, 327 F.3d.
9 938, 959 (9th Cir. 2003). Specifically, the Court has considered all the following factors
10 and concluded that they support final approval of the Settlement: the strength of
11 Plaintiffs' case, the risk and complexity of further litigation, and the risks of maintaining
12 class status throughout the litigation, the substantial benefits offered to class members,
13 the extent of discovery and the status of the proceedings at the time of settlement, the
14 experience and views of counsel, the lack of settlement participation by those federal
15 and state governmental entities placed on notice of this Settlement, and the Settlement
16 Class members' reaction. There is a complete lack of evidence of any collusion, and
17 the Court recognizes the participation of Court appointed mediator, Hon. Edward
18 Infante (ret.) whose own opinions regarding the settlement are reflected in his
19 Declaration dated November 30, 2010. See Docket No. 267-4. The Court therefore
20 approves the Settlement Agreement and the Settlement contemplated thereby in all
21 respects, and orders the Parties to perform its terms to the extent the Parties have not
22 already done so.

23 13. The Federal Action, as well as all of the Released Claims, are dismissed
24 with prejudice. The Parties are to bear their own costs, except as otherwise provided in
25 the Settlement Agreement.

26 14. Upon the Effective Date, the Plaintiffs and the Settlement Class shall be
27 deemed to have, and by operation of the Judgment and Order of Dismissal shall have,
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1 fully, finally, and forever released, relinquished and discharged the Released Parties
2 from all Released Claims.

3 15. Upon the Effective Date, the Defendants and the Released Parties shall
4 be deemed to have, and by operation of the Judgment and Order of Dismissal shall
5 have, fully, finally, and forever released, relinquished, and discharged Plaintiffs, the
6 Settlement Class and Plaintiffs' Counsel from all claims, known or unknown, based upon
7 or arising out of the institution, prosecution, settlement or resolution of the Actions or
8 the Released Claims.

9 16. Notwithstanding the above releases, (a) no Person participating in the
10 Settlement as a member of the Settlement Class has released any Personal Injury Claim
11 or any right to pursue any Personal Injury Claim in a separate litigation; (b) in no event
12 will a Personal Injury Claim be deemed to be barred by the release of the Released
13 Claims under the doctrines of res judicata, collateral estoppel, a bar against splitting of
14 claims or otherwise; and © in no event will the Settlement or Settlement Agreement be
15 construed to preclude Defendants from basing, in whole or in part, any defense to any
16 Personal Injury Claims on the notices, warnings, Screen Enhancements, and public
17 information related to the Settlement.

18 17. The Court further orders that: (a) all proceedings in the Actions are
19 stayed, other than proceedings in furtherance of the Settlement and (b) all members of
20 the Settlement Class and all Persons acting or purporting to act on behalf of any
21 member(s) of the Settlement Class, who do not timely and properly opt-out from the
22 Settlement Class in accordance with the court-ordered procedures are enjoined under
23 the All Writs Act, 28 U.S.C. 1651, the Anti-Injunction Act, 28 U.S.C. 2283, and Federal
24 Rule of Civil Procedure 65, from commencing or prosecuting any action, suit,
25 proceeding, claim, or cause of action (except those based on personal injury), in any
26 jurisdiction, court or forum against a Released Party relating to or arising out of the
27 subject matter of the Actions.

1 18. Neither the Settlement Agreement nor the Settlement, nor any act
2 performed or document executed pursuant to or in furtherance of the Settlement
3 Agreement or the Settlement is evidence, or an admission or concession by any Party,
4 any Released Party or any signatory to the Settlement Agreement, of any fault, liability
5 or wrongdoing whatsoever, as to any facts or claims alleged or asserted in any of the
6 Actions, or any other actions or proceedings. The Settlement Agreement is not a
7 finding or evidence of the validity or invalidity of any claims or defenses in any of the
8 Actions or any wrongdoing by any of the Defendants or any damages or injury to any
9 member of the Settlement Class. Neither the Settlement Agreement, nor any of the
10 terms and provisions of the Settlement Agreement, nor any of the negotiations or
11 proceedings in connection therewith, nor any of the documents or statements referred
12 to herein or therein, nor the Settlement, nor the fact of the Settlement, nor the
13 settlement proceedings, nor any statements in connection therewith: (a) will (I) be
14 argued to be, used or construed as, offered or received in evidence as, or otherwise
15 constitute an admission, concession, presumption, proof, evidence, or a finding of any
16 liability, fault, wrongdoing, injury or damages, or of any wrongful conduct, acts or
17 omissions on the part of any of the Released Parties, or of any infirmity of any defense,
18 or of any damage to any Plaintiff or member of the Settlement Class; or (ii) otherwise
19 be used to create or give rise to any inference or presumption against any of the
20 Released Parties concerning any fact alleged or that could have been alleged, or any
21 claim asserted or that could have been asserted in any of the Actions, or of any
22 purported liability, fault, or wrongdoing of the Released Parties or of any injury or
23 damages to any Person; or (b) otherwise be admissible, referred to or used in any
24 proceeding of any nature, for any purpose whatsoever. Provided, however, (x) the
25 Settlement Agreement and/or Judgment and Order of Dismissal may be introduced in
26 any proceeding, whether before the Court in the Federal Action or otherwise, as may be
27 necessary to argue that the Settlement Agreement and/or Judgment and Order of
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1 Dismissal has res judicata, collateral estoppel or other issue or claim preclusion effect or
2 to otherwise consummate or enforce the Settlement and/or Judgment and Order of
3 Dismissal; and (y) the notices, warnings, Screen Enhancements, and public information
4 related to the Settlement may be used by Defendants in defending any Personal Injury
5 Claim.

6 19. Pursuant to the Settlement Agreement, Defendants have agreed to pay
7 Class Counsel the amount of the Fee and Expense Award ordered prior to the Effective
8 Date by the Court up to \$4,750,000 in attorneys' fees and \$180,000 in expenses. The
9 agreement regarding fees and costs was reached after Mediator Infante reviewed the
10 daily time records for each Class Counsel firm recorded contemporaneously by such
11 counsel using time and billing software designed for such purpose. The Court finds that
12 an award of attorneys' fees in the amount of \$ 4,750,000, and expenses of
13 \$ 180,000 is fair and reasonable, and therefore pursuant to the Settlement
14 Agreement, Defendants shall pay said amount of attorneys' fees and expenses to Arnold
15 Law Firm as receiving agent for Class Counsel in full satisfaction of any claim for
16 attorneys' fees and expenses within five (5) business days after the Effective Date,
17 subject to the terms and conditions of the Settlement Agreement ("Fee and Expense
18 Award").

19 20. Pursuant to the agreement of the Parties, the Court hereby severs the
20 above Fee and Expense Award from this Judgment and Order of Dismissal so that it
21 shall immediately become a separate and independent order and not part of this
22 Judgment and Order of Dismissal.

23 21. Without affecting the finality of this Judgment and Order of Dismissal in
24 any way, this Court hereby retains continuing jurisdiction over: (a) implementation of
25 the Settlement and the Claims Administration Plan, including without limitation,
26 administrative determinations of the Settlement Administrator accepting and rejecting
27 claims and any distributions of Class Settlement Consideration; (b) the payment of
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1 attorneys' fees and expenses; and © all Parties and the Parties' Counsel for the purpose
2 of construing, enforcing, and administering the Settlement Agreement.

3 22. If the Settlement is terminated by Defendants pursuant to the terms of
4 the Settlement Agreement, or if any specified condition to consummation of the
5 Settlement set forth in Section IV(I)(2) of the Settlement Agreement is not satisfied for
6 any reason, or if the Settlement is disapproved, or if the Court declines to enter the
7 Judgment and Order of Dismissal or said judgment is reversed or modified in material
8 part on or following appellate review, or if the Effective Date otherwise does not occur,
9 then, in any such event, the Settlement Agreement (including any amendment(s)), the
10 MOU (including any amendment(s), this Judgment and Order of Dismissal, the
11 Preliminary Approval Order, the Fee and Expense Award and all orders entered and
12 releases delivered in connection with the Settlement, including without limitation the
13 certification of the Settlement Class, shall be rendered null and void and of no further
14 force or effect, without prejudice to any Party, and may not be introduced as evidence
15 or referred to in any actions or proceedings by any Person, and each Party will be
16 restored to his, her or its respective position as of the date of the execution of the MOU
17 and they will proceed in all respects as if the Settlement Agreement and MOU had not
18 been executed and the related orders had not been entered, and in that event all of
19 their respective claims and defenses as to any issue in any of the Actions will be
20 preserved without prejudice in any way. Accordingly, upon the occurrence of said
21 event, *inter alia*, the Court's prior class certification order dated February 16, 2009 will
22 be reinstated in the Federal Action and Defendants will have the right to oppose and
23 appeal certification of any plaintiff class in any of the Actions or other future
24 proceedings.

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1 SO ORDERED this 10 day of June, 2011.

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4 
5 Hon. Claudia Wilken
6 United States District Court Judge
7

8 APPROVED AS TO FORM:

9 
10
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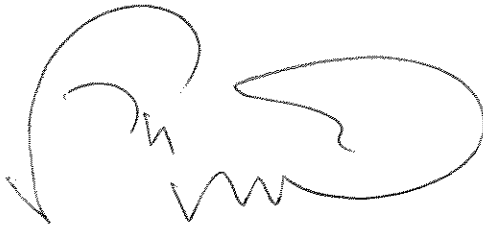
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28
~~Proposed~~ Order Granting Final Approval of Class
Settlement; Final Jdmt & Order of Dismissal



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Attorneys for the Plaintiff SETTLEMENT Class

Keilholtz v. Lennox Hearth Products

Exclusions

	Name	Address	City	State	Zip
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2	JAMES D FRIEDMAN	1996 W HIDDEN RESERVE CT	MEQUON	WI	53092
3	STANTON L OLSON AND DENA L OLSON	10204 N WILLOW AVE	KANSAS CITY	MO	64157
4	TOMOYASU ISHIGAMI	1800 OAK STREET UNIT 808	TORRANCE	CA	90501
5	DEBRA A LUNA	103 RED ALDER TRL	SAN ANTONIO	TX	78256
6	ROBERT WILKS	4243 GLENSTREAM DR	BATAVIA	OH	45103
7	MARCY G INGLESE AND LAUREANO L INGLESE	689 GILLET RD	ROCHESTER	NY	14624
8	WILLIAM F GRADISHER	15 HONEYSUCKLE DR	MANAHAWKIN	NJ	08050
9	MAUREEN T GRADISHER	29 MULBERRY DR	MANAHAWKIN	NJ	08050
10	RYAN W STEWART	70 GULL VIEW CT	OAKLEY	CA	94561
11	CAROLE DICKENSON	20 MERGANSER CT	OAKLEY	CA	94561
12	CURTIS MANNING	20 SNOWY EGRET CT	OAKLEY	CA	94561
13	CINDY PEIRCE AND ALAN PEIRCE	21 PUFFIN CIR	OAKLEY	CA	94561
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